

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:

All Suits Against the Saint Thomas Entities

MDL No. 2419
Dkt. No 1:13-md-2419 (RWZ)

**SAINT THOMAS ENTITIES' EMERGENCY MOTION FOR CLARIFICATION OF
AMENDED SCHEDULING ORDER**

The Saint Thomas Entities¹ hereby seek clarification of the Court’s Amended Scheduling Order (the “Order”), issued April 25, 2016 [Dkt. # 2827]. The Saint Thomas Entities seek clarification for the following reasons:

1. The Order requires that any discovery motions be filed by May 6, 2016.
2. Prior to the first bellwether trial, the Saint Thomas Entities intend to move for an order regarding certain deposition testimony in which the witness invoked his or her Fifth Amendment privilege. These witnesses include, but will not be limited to, witnesses such as Annette Robinson, Belmira Carvalho, Owen Finnegan, Cory Fletcher, Stephen Haynes, Steven Higgins, and Lisa Cadden. The Saint Thomas Entities will seek an order that, at trial, a jury may draw certain adverse inferences from these witnesses' invocation of the Fifth Amendment.
3. Similarly, to date, the Court has not permitted the Saint Thomas Entities to take the depositions of a significant number of NECC Insiders, including many of those individuals who have been indicted; certain NECC-affiliated companies, such as Medical Sales Management, Inc.; and NECC itself. The Court's order quashing those deposition notices was

¹ Saint Thomas West Hospital f/k/a St. Thomas Hospital; Saint Thomas Health; and Saint Thomas Network.

based largely on the fact that these individuals and companies (through individuals) would undoubtedly claim their Fifth Amendment privilege, as they had in written discovery.² To the extent the Court does not permit these depositions to proceed before trial, the Saint Thomas Entities intend to move for an order that, at trial, a jury may draw an adverse inference from these witnesses' anticipated invocation of their Fifth Amendment rights, as well on certain of their discovery responses, which should be read to the jury.

4. While these motions do not involve a request to compel additional discovery, they do involve deposition testimony already taken and discovery disputes extensively litigated by the parties and affected individuals.

5. Therefore, the Saint Thomas Entities request that the Court clarify the Order to state whether any such motion seeking an adverse inference at trial must be filed before the May 6, 2016 deadline, or whether such motions may be filed *in limine*, in the regular course of pre-trial motions.

WHEREFORE, the Saint Thomas Entities request that the Court clarify if any motions seeking an adverse inference at trial against certain entities and individuals must be filed as discovery motions before May 6, 2016, or whether they may be filed at a later date, when other pre-trial, evidentiary motions are to be filed.

² The depositions were stayed until the criminal charges pending against the individuals were resolved.

April 29, 2016

Respectfully submitted,

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LOCAL RULE 7.1 CERTIFICATE OF CONFERENCE

I certify that I contacted PSC representatives about whether they assented to the relief requested in this motion, but I did not receive a response by the time of filing.

/s/ Sarah P. Kelly

Sarah P. Kelly

CERTIFICATE OF SERVICE

I certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing this 29th day of April, 2016.

/s/ Sarah P. Kelly

Sarah P. Kelly

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